

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**DENEAL F. FISHER, et al.,**

**Plaintiffs**

**v.**

**AEROTEK, INC.,**

**Defendant**

**CIVIL NO. JKB-11-1355**

\* \* \* \* \*

**MEMORANDUM AND ORDER**

On November 9, 2011, Plaintiffs filed a document (ECF No. 36) styled as a “Line of Dismissal as to Counts 3, 4, 5, and 6 of the Amended Complaint for Damages.” The Court noted (ECF No. 38) that this method of attempting to dismiss individual counts of a complaint was improper under the Federal Rules of Civil Procedure. (*Id.* 1.) Accordingly, the Court construed the “Line of Dismissal” as a motion for leave to amend the complaint, entitling Defendant to respond on or before November 28, 2011. (*Id.*) Defendant objects (Def.’s Resp., ECF No. 43) to Plaintiff’s Motion on two grounds:

(1) Plaintiffs have no viable race discrimination claim to pursue through a Second Amended Complaint for Damages; and (2) the constructive motion for leave to amend the pleadings is not accompanied by a proposed amendment, as required by L.R. 103.6.a, and [Defendant] cannot agree to an amendment it has not seen.

(*Id.* 1.)

Defendant’s first objection is irrelevant. Whether a plaintiff may amend a complaint to drop causes of action from the lawsuit has nothing to do with the merits of the plaintiff’s case, either the dropped counts or the remaining counts. Defendant’s second objection was remedied when Plaintiffs filed their Reply (ECF No. 47), which includes a proposed Second Amended

Complaint for Damages in “clean” (ECF No. 47-1) and “redline” (ECF No. 47-2) versions. Because the Plaintiffs have complied with the requirements of Local Rule 103.6(a) and the Court can find no other reason not to grant Plaintiffs’ Motion for Leave to Amend, such motion (ECF No. 36) is GRANTED. *See* Fed. R. Civ P. 15(a)(2) (“[t]he court should freely give leave [to amend] when justice so requires”). The Court accepts Plaintiffs’ proposed Second Amended Complaint for Damages (ECF No. 47-1) as the Second Amended Complaint in this case. Since the Second Amended Complaint supersedes the pleading at which Defendant’s Motion for Summary Judgment (ECF No. 40) is directed, Defendant may wish to file a brief motion seeking to adopt pertinent portions of its Motion for Summary Judgment and supporting materials as applicable to the Second Amended Complaint. If Defendant does so, it is DIRECTED so to file within ten days of this Order.

The Clerk is DIRECTED to docket the “clean” version of the Second Amended Complaint (ECF No. 47-1) as the Second Amended Complaint in this case.

DATED this 7<sup>th</sup> day of February, 2012.

BY THE COURT:

/s/  
James K. Bredar  
United States District Judge